

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JON MAJOR,

Plaintiff,

V.

CHERYL STRANGE,

Defendant.

Case No. 3:23-cv-05307-TMC-MLP

ORDER DENYING MOTION FOR
RECONSIDERATION

Before the Court is pro se plaintiff Jon Major's motion for reconsideration, which asks the Court to vacate its order and judgment dismissing his third amended petition for writ of habeas corpus without prejudice, Dkt. 54, 55. Dkt. 61.

Mr. Major initiated this action on April 7, 2023, by filing a motion to proceed in forma pauperis and attaching a copy of his proposed habeas petition. Dkt. 1. His petition seeks relief from his 2018 King County Superior Court judgment and sentence for one count of commercial sexual abuse of a minor and one count of possession of depictions of a minor engaged in sexually explicit conduct, Dkt. 18 at 2, 21. Dkt. 7. He was sentenced to 55 months confinement to be followed by 36 months of community custody supervision. Dkt. 18 at 2, 24. On March 23, 2023, the Washington Department of Corrections (“DOC”) issued a Secretary’s Warrant for

1 Mr. Major's apprehension for violating a condition of his community custody supervision.
 2 Dkt. 22-1 at 5. On July 28, 2023, Respondent Cheryl Strange moved to dismiss Mr. Major's
 3 petition for violation of the fugitive disentitlement doctrine, Dkt. 29, under which courts may
 4 "dismiss an appeal or writ in a criminal matter when the party seeking relief is a fugitive."
 5 *Degens v. United States*, 517 U.S. 820, 823 (1996) (citing *Ortega-Rodriguez v. United States*,
 6 507 U.S. 234, 239 (1993)); Dkt. 47 at 9.

7 On November 20, 2023, The Honorable Michelle L. Peterson, U.S. Magistrate Judge,
 8 issued a report and recommendation ("R&R") recommending dismissal of Mr. Major's petition
 9 under the fugitive disentitlement doctrine "unless Petitioner voluntarily surrenders to the
 10 Washington DOC, or is otherwise returned to custody, prior to final resolution of this action." *Id.*
 11 at 10. Judge Peterson reasoned, in part, as follows:

12 Petitioner seeks to challenge in this action the constitutionality of the same
 13 judgment and sentence from which he has absconded. This presents a clear obstacle
 14 to enforcing any judgment that may be entered against him in this action. It would
 15 also be manifestly unfair to permit Petitioner to access this Court for purposes of
 16 challenging his state court judgment and sentence, while simultaneously evading
 17 the jurisdiction of the entity charged with executing that sentence; i.e., the DOC.
 18 Dkt. 47 at 9. The R&R gave Mr. Major 21 days from the date of its issuance to file objections to
 19 it. Dkt. 47 at 11. He did not file objections or voluntarily surrender to the DOC by the date the
 20 R&R became ripe for the Court's consideration.¹ On December 21, 2023, the Court, reviewing
 21 the R&R for clear error, adopted it in full and dismissed Mr. Major's petition without prejudice.
 22 Dkt. 54, 55; *see* Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition ("When no
 23 timely objection is filed, the court need only satisfy itself that there is no clear error on the face
 24 of the record in order to accept the recommendation." (citing *Campbell v. United States Dist.*

¹ The Court continued its consideration of the R&R to allow Mr. Major additional time to follow through on his stated intent to surrender to the DOC by December 20, 2023. Dkt. 52 at 3. The Court ruled on the R&R after he failed to do so. *See* Dkt. 54 at 1.

1 *Ct.*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879)). Mr. Major now moves for
 2 reconsideration of the Court’s decision.

3 Motions for reconsideration are “rarely granted.” *Colchester v. Lazaro*, No. C20-1571
 4 MJP, 2022 WL 1078573, at *2 (W.D. Wash. Apr. 11, 2022). They “should not be granted, absent
 5 highly unusual circumstances, unless the district court is presented with newly discovered
 6 evidence, committed clear error, or if there is an intervening change in the controlling
 7 law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.
 8 2009); *see also* LCR 7(h)(1) (“Motions for reconsideration are disfavored. The court will
 9 ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or
 10 a showing of new facts or legal authority which could not have been brought to its attention
 11 earlier with reasonable diligence.”). “‘Clear error’ for purposes of a motion for reconsideration
 12 occurs when ‘the reviewing court on the entire record is left with a definite and firm conviction
 13 that a mistake has been committed.’” *Baptiste v. LIDS*, No. C 12-5209 PJH, 2014 WL 1677597,
 14 at *4 (N.D. Cal. Apr. 28, 2014) (quoting *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th
 15 Cir. 2013)). Generally, courts must construe pro se motions liberally. *Bernhardt v. Los Angeles*
 16 *County*, 339 F.3d 920, 925 (9th Cir. 2003).

17 As an initial matter, the Court notes that Mr. Major filed this motion over 14 days after
 18 the order for which he seeks reconsideration, in violation of the Western District of
 19 Washington’s Local Rules. LCR 7(h)(2) (“A motion for reconsideration . . . shall be filed
 20 within fourteen days after the order to which it relates is filed.”).² Nevertheless, given
 21 Mr. Major’s pro se status and the fact that he filed the motion soon after the deadline, the Court
 22 will consider the merits of the motion. *See Andrews v. Knowles*, No. 10cv2109-BEN, 2011 WL
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24 ² On January 3, 2024, the Court denied Mr. Major’s request to extend his deadline to file a
 motion for reconsideration. Dkt. 58.

1 2149619, at *1 (S.D. Cal. June 1, 2011) (considering untimely motion for reconsideration on the
 2 merits “in light of Petitioner’s pro se prisoner status and in the interest of justice”).

3 Mr. Major argues that the Court committed clear error in concluding that he was a
 4 “fugitive” for purposes of the fugitive disentitlement doctrine.³ *See* Dkt. 61 at 10–11.
 5 Specifically, he contends that he is not a “fugitive from justice” under the definition of the term
 6 used in 18 U.S.C § 921(a)(15): “The term ‘fugitive from justice’ means any person who has fled
 7 from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal
 8 proceeding.” According to Mr. Major, because his warrant was issued by DOC “and not a
 9 prosecuting attorney or the like,” it cannot be said that he is avoiding prosecution and, therefore,
 10 he is not a “fugitive.” Dkt. 61 at 10.

11 The statute Mr. Major cites to for his definition of “fugitive” contains definitions for a
 12 criminal statute setting out firearm-related crimes. *See generally* 18 U.S.C. §§ 921–922. It is
 13 unrelated to the fugitive disentitlement doctrine. Rather, the Ninth Circuit has upheld the
 14 dismissal of actions filed by fugitives like Mr. Major who are subject to arrest warrants that are
 15 issued for failure to comply with conditions of their parole. *Williams v. Alameida*, 511 F.3d 973,
 16 974 (9th Cir. 2007) (conditionally dismissing appeal of 42 U.S.C. § 1983 claim against the
 17 plaintiff under the fugitive disentitlement doctrine because the plaintiff had “failed to report to
 18 his parole agent” after being released from prison on parole and remained a “parolee at large”
 19 after “an arrest warrant had been issued” for him). As stated, Washington DOC issued an arrest
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21 ³ Mr. Major’s motion also argues that it was “manifest injustice” for the Court to dismiss the
 22 petition because the Court’s rulings show it is biased against him. *See* Dkt. 61 at 11. Mr. Major
 23 incorporated this argument into his motion for recusal, *see* Dkt. 62 at 2 n.2, which was denied by
 24 the undersigned on January 12, 2024, and by Chief U.S. District Judge David G. Estudillo on
 January 12, 2024. Accordingly, to the extent Mr. Major also asserts the undersigned’s alleged
 bias as a ground for reconsideration, it is denied for the reasons explained in the decisions on the
 motion for recusal.

1 warrant for Mr. Major after finding “reasonable cause” to believe that he violated a condition of
2 his community custody.⁴ Dkt. 22-1 at 5. As of this order, Mr. Major has not informed the Court
3 that he has turned himself in to the Washington DOC.⁵ Accordingly, Mr. Major has not shown
4 that the Court’s decision was clear error.

5 For the foregoing reasons, Mr. Major’s motion for reconsideration, Dkt. 61, is DENIED.

6 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
7 to any party appearing pro se at said party’s last known address.

8 Dated this 24th day of January, 2024.

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11 Tiffany M. Cartwright
12 United States District Judge

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21 ⁴ An individual on community custody “is the functional equivalent of a parolee.” *Nash v. Robinson*, No. 09-5178RBL/JRC, 2010 WL 4852199, at *8 (W.D. Wash. Nov. 1, 2010), *report and recommendation adopted*, 2010 U.S. Dist. LEXIS 125438, 2010 WL 4918957 (Nov. 26, 2010), *aff’d*, 471 F. App’x 643 (9th Cir. 2012).

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23 ⁵ Respondent most recently confirmed Mr. Major’s fugitive status on December 20, 2023.
24 Dkt. 53.